

But the expansion of civil rights under the Warren and Burger Courts was a whole new kettle of fish."

What I am sharing with you here is an amazing summary of Heather Cox Richardson. "Opponents of the new decisions insisted the court was engaging in"—hold on tight—"judicial activism" in trying to strike down discrimination and bigotry—"taking away from voters the right to make the decisions about how society should work." They said Justices were "legislating from the bench."

Heard that before?

"They insisted the Constitution is limited by the views of its framers, that the government can do nothing not explicitly written in that 1787 document. Faced with confusion over the exact meaning of the Constitution, some revised their position in a few ways. One was to rely on textualism or originalism, the idea that a law says exactly what it says and nothing else. This is the foundation for today's 'originalists' like [Amy Coney] Barrett."

When you hear this debate, "I am just following the Constitution. I am just following the text. I want to go to the original document. I don't want to see judges who are activists," it had its origin in the 1950s when two Justices on the Supreme Court appointed by Republicans stepped up and said: It is time for us to be serious about civil rights in America. Some politicians and those who support them have never gotten over it, and we are still debating it today.

Let me conclude. I see my colleagues waiting patiently. I am sorry it took a long time, but this is as serious as it gets, as far as I am concerned.

Let me conclude by saying this: There are so many issues of critical importance at risk in what we are about to do. The 6-to-3 conservative majority in the Supreme Court will challenge not only the future of the Affordable Care Act but voting rights and the outcome of an election, the right of privacy and choice, civil rights, environmental protections, marriage equality, worker protections, the fate of Dreamers, gun safety laws, and so much more.

We asked Amy Coney Barrett repeatedly, many of us did: Because the President has said he put you on the Court with a mission, and you are denying that took place, will you at least promise us that you will recuse yourself from cases directly relating to these issues? And she said she might, she might not; there was a process she might follow.

There is something else she could do. You see, if this Senate goes forward and approves the nomination of Amy Coney Barrett, she has one last decision before she becomes a Supreme Court Justice. She gets to choose the day when she is sworn in. I would like to suggest to her, for the integrity of the Court and to remove any possible cloud over her nomination created by

the President's tweets and promises, I would like to ask her to pledge to the American people that whatever the Senate does, she will not take the oath of office until a new President is sworn in. If it is a reelection of President Trump, so be it. If it is Joe Biden, so be it. But if she will wait and absent herself from any election contest or debate on the Affordable Care Act, it will start to remove this cloud of doubt, this orange cloud of doubt which is over her nomination.

I am going to stand up for the constituents I have talked about today and so many others whose futures hang in the balance, and I will vote no on Judge Amy Coney Barrett.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

#### COLORADO WILDFIRES

Mr. GARDNER. Mr. President, I look forward to coming to the floor and speaking about the nomination that is currently before the U.S. Senate, the nomination of Judge Barrett to be placed on the U.S. Supreme Court, but at this point, I think it is important that we talk about what is happening in Colorado as we speak because of the heroic men and women who continue to fight our Nation's fires and certainly the devastating and catastrophic fires that we are seeing right now in Colorado.

This year we have already seen two of the largest fires in Colorado history burning over 200,000 acres—wildfires that started out at 20,000 acres, 25,000 acres, and then within hours grew 80-, 90-, 100,000 acres in a day. It is unheard of growth for wildfires.

The picture that I am showing you here is Estes Park, CO. Most people may be familiar with Estes Park. It is the gateway to Rocky Mountain National Park. You can see Lake Estes here and the town here. The town has been evacuated. A town of thousands of people has been evacuated because of two fires that are now threatening the area.

One fire is the Cameron Peak Fire, which became the largest fire in the State's history, only to be challenged by another fire coming through Rocky Mountain National Park called the East Troublesome Fire. Both are impacting Rocky Mountain National Park. The city of Estes Park, the city of Grand Lake, and the city of Granby, overnight, they did receive a winter storm. It is snowing now, and it is reducing the fire activity. It will not put the fire out. But my prayers and thoughts continue with the men and women who are fighting this fire so valiantly and the people in these communities who are in harm's way.

We know that homes have been lost. We don't know how many, but we know that homes have been lost, and we certainly acknowledge the loss of life that has already occurred. A couple in Grand Lake, who stayed in their home when the fire came through—they were together, but we pray for them and their families, and we mourn their loss.

The East Troublesome Fire, which is the Medicine Bow-Routt National Forest and Thunder Basin National Grassland, has a Type 1 management team already assigned. It is the No. 1 priority of the U.S. Forest Service in the country right now because of the aggressive fire behavior, with spotting that has threatened places like Estes Park. There are evacuations, road closures, trail closures, and has over 500 people, right now, assigned to this fire.

The Cameron Peak Fire has about 1,100 personnel working on the fire right now. We know about 470 structures have been lost. It is over 208,000 acres.

The Calwood Fire in Boulder County has a Type 2 management team fighting the fire right now. Their evacuation is in effect. There are nearly 400 people fighting this fire. There were 28 structures lost.

The Ice Fire—an ironic name—in the San Juan National Forest, near Silverton, CO, we know that it is about 600 acres right now.

There is the Williams Fork Fire, which has been burning for months in Colorado and Grand County. In Arapahoe and Roosevelt National Forests, we know that there have been several communities and energy infrastructure threatened by all these fires.

If you think about this entire town being evacuated, in the Colorado-Big Thompson Project, which provides a great deal of water to the Front Range of Colorado and through the South Platte River Valley, diversions were stopped, energy production impacted, and major utility transmission lines have been lost.

And, of course, there is the loss to some of the most magnificent areas of Rocky Mountain National Park, perhaps an untold story that we will learn about in the coming days.

This Congress and past Congresses have not been idle in the work that we have done to protect our resources. In fact, in this last Congress, we put an end to a practice that was known as "fire borrowing," which involved raiding accounts that were not meant to go to suppression of wildfires to pay for increasingly expensive firefighter seasons.

The fix for fire borrowing was included in the 2018 spending package. What that means is we will no longer be cannibalizing funding for fuel reduction for mitigation that could have prevented a fire like this. Instead, we will be fully funding the firefighting effort and allowing those mitigation dollars and those fuel reduction dollars to be continued to be used so we can prevent this kind of fire from occurring.

We have also passed legislation for water resilience projects and categorical exclusions to help with forest management. We passed Healthy Forest Restoration Act language that includes fire and fuel breaks. We have worked on 20-year stewardship contracts with cottonwood reform. We have proceeded with reforms to fire hazard mapping

initiatives and to fuels management for protection of electric transmission lines and Good Neighbor Authority to help make sure we continue to give tools to our land managers.

The 2018 farm bill built upon many of the reforms that we passed in the 2014 farm bill changes. We have worked to expand the Collaborative Forest Restoration Program. We doubled its funding to help expand Good Neighbor Authorities to Tribes and to counties. All of these tools will help us deal with the wildfires, but, certainly, they are not going to put this fire out today.

So I come to the floor just to thank the men and women who are fighting these fires. To the leaders in these communities, the county commissioners, the sheriffs, the law enforcement personnel, first responders who have done a magnificent job in protecting structures, protecting their communities, protecting their people, I commend you, and know that you have the support of everybody here in our efforts to give you the tools you need to do your jobs, to be safe, and to protect our greatest resources and communities.

So, again, I look forward to coming to the floor to speak about Judge Barrett and her nomination, but, for now, I think it is important that we take this time to recognize the challenge that Colorado faces and the need for continued work in this Chamber to address forest management and Healthy Forest Initiatives to make sure that we can prevent these fires.

These are some of the original beetle kill areas that came in 30, 40 years ago. It was an insect that deadened and downed trees that we knew at some point could be a major challenge if there was a fire, and that is exactly what we are seeing.

I hope that all of my colleagues will join me in prayers for our State and States across the country that have been affected by wildfires and know that we have more work to do to prevent the loss of some of our greatest natural resources.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

#### NOMINATION OF AMY CONEY BARRETT

Mr. KENNEDY. Mr. President, I would like to spend a few minutes talking about the nomination of Judge Amy Coney Barrett to be an Associate Justice of the U.S. Supreme Court. It is horribly newsworthy to say that Judge Barrett's confirmation vote will not be unanimous. It should be. It won't be.

If you judged Judge Barrett solely on her intellect and her academic achievements, certainly her nomination should be unanimous. Any fairminded person would have to be impressed. She is an honors graduate of St. Mary's Dominican High School in New Orleans, one of the finest schools in this country. She is an honors graduate of Rhodes College in Memphis, an extraordinary liberal arts school. She is an honors graduate of Notre Dame Law

School. She finished first in her class. She clerked for two of the most distinguished jurists in this country—the late Justice Scalia and Judge Silberman. She was a chaired professor at Notre Dame Law School. She is now a member of the Seventh Circuit Court of Appeals. Any fairminded person who reads her legal writings and her opinions would come away impressed.

If you judged Judge Barrett solely on her integrity, her confirmation vote should be unanimous. We all watched her almost 30 hours of testimony. We all know now about her beautiful family. She has seven beautiful children, two of whom are adopted and two of whom happen to be children of color. She is a devout Christian.

If you talk to her former students, to her colleagues, and to her critics, who know her well, they will all tell you that she is a person of integrity. And if you don't want to believe any of those people—I wish you could, and I know the Presiding Officer can—but I wish the American people could see her FBI background check. The Presiding Officer and I know that when the FBI checks your background, it is kind of a combination between an endoscopy and a colonoscopy. They are pretty thorough. There is not a hint of scandal.

If Judge Barrett were being judged on the basis of her temperament, she would be a unanimous choice as well. We saw that in her 30 hours of testimony. She listens well. She answers truthfully. She suffers fools gladly. I was just so impressed watching her.

The reason that Judge Barrett will not be a unanimous choice, at least within this body, has to do with a little bit of history. This is one person's point of view, but I think history will prove that I am correct. For the last 60 years in America, we have been moving from a representative government and more to what I will call declarative government. We, as you know, are a democracy. We are not a pure democracy, unlike Athens, for example. When we have to make a decision on social or economic policy, each of us doesn't put on a fresh toga and go down to the forum or the public square and vote. We elect representatives to make those decisions for us at the Federal level. They are called Members of Congress, and they are accountable. The people have given their power to our representatives, and if those representatives don't exercise that power in making social and economic policy, those representatives can be unelected.

But in the last 60 years, in some cases voluntarily and in some cases involuntarily, this body, the U.S. Congress, which under our Constitution is supposed to make social and economic policy as representatives of the people, has, as I said, in some cases voluntarily and in some cases involuntarily, ceded our power—ceded it to the administrative state and to the judiciary.

Let me talk for a moment about the administrative state. Some would call it the bureaucracy. The bureaucracy

now at the Federal level is a giant rogue beast. It enjoys power once only known by Kings and Queens. The administrative state makes its own laws, called rules; interprets its own laws; and enforces its own laws before judges that the bureaucracy itself appoints. We in the U.S. Congress have allowed that. The judiciary has helped the administrative state gather that power as well.

As you know, there is a rule called the Chevron doctrine. I won't bore you with the details, but it basically says that if the administrative state—the bureaucracy—interprets a rule or regulation or even a statute in a “reasonable way,” whatever that is, the judiciary is going to defer to them. The U.S. Congress has also ceded much of its power to the judiciary, and we have had many Federal judges that greedily accepted it.

The reason that we will not have a unanimous vote for this eminently qualified nominated jurist is because of that. Some people in America and some of my colleagues like the fact that the U.S. Supreme Court, for the last 60 years, has not demonstrated judicial restraint.

Now, I am not going to stand here and tell you that the U.S. Supreme Court doesn't make law. Of course it makes law. It makes law in a particular case—one side wins; one side loses. Sometimes the U.S. Supreme Court makes law at the direction of Congress and at the direction of our Founders.

Our Constitution only prohibits unreasonable searches and seizures. We look to Federal judges to the U.S. Supreme Court to tell us what “reasonable” and “unreasonable” means, but in all cases our Federal judges and the U.S. Supreme Court is supposed to demonstrate judicial restraint. When it is a close question, when it is a matter of social—major social or economic policy, then the Federal judiciary is supposed to show deference to the U.S. Congress, but more and more it does not.

Some Americans like that. Some of my colleagues in this Chamber like that. They think that the U.S. Supreme Court ought to be a mini-Congress. They think that the U.S. Supreme Court should be a political body. They like the fact that if they can't pass a law changing social and economic policy through the U.S. Congress, they get a second bite at the apple and can go to the U.S. Supreme Court. I don't believe that is constitutional nor does Judge Barrett, I have concluded after 30 hours of testimony, and that is why her confirmation will not be unanimous in this body.

Let me tell you what I believe—and I will preface this by saying, after listening to Judge Barrett for 30 hours, this is what I believe she believes: I believe that Madison and his colleagues got it right. I believe that we should have three equal branches of government. I believe we should have checks and balances. I believe that just because those